

FEB 08 2019

Clerk, U.S. Courts
District Of Montana
Missoula DivisionIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WAYNE DALE KELLBERG,

Plaintiff,

vs.

RICKY SHELBOURNE, Supervisor
FBI

Defendant.

CV 18-204-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order and Findings and Recommendation on January 2, 2019, granting Plaintiff Wayne Dale Kellberg's motion for leave to proceed in forma pauperis and recommending that the Court dismiss Kellberg's complaint without leave to amend. (Doc. 3.) Kellberg failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

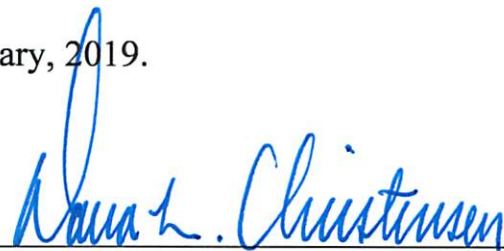
Having reviewed the Findings and Recommendation (Doc 3), the Court finds no clear error in Judge Lynch's recommendation that this case be dismissed. Kellberg's claims are indistinguishable from those raised in *Kellberg v. Ricky Shelbourne, Supervisor FBI*, CV 18-176-M-DLC-JCL. Judge Lynch did not clearly err in determining that res judicata prevents litigation of those claims in this lawsuit.

Nor does the Court find clear error in the recommendation to dismiss this case with prejudice rather than to grant leave to amend. Amendment cannot cure the preclusive effect of Kellberg's prior lawsuit against Shelbourne. *See Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007).

Accordingly, IT IS ORDERED that:

- (1) Judge Lynch's Findings and Recommendation (Doc. 3) is ADOPTED IN FULL;
- (2) Kellberg's complaint is DISMISSED with PREJUDICE; and
- (3) The Clerk of Court shall close this case and enter judgment pursuant to Federal Rule of Civil Procedure 58.

DATED this 8th day of February, 2019.



Dana L. Christensen, Chief Judge
United States District Court